



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

Governor

December 9, 2016

GARY SPACKMAN

Director

KEN NEELY
WATERMASTER, WATER DISTRICT NO. 63S
322 E. FRONT ST.
BOISE, ID 83720-0098

RE: Water Right 63-5195 diverting from the Niznik Well

Mr. Neely,

The question has been posed to the department as to whether water right 63-5195, owned by David and Dianne Niznik and the well it is diverted from (known as the Niznik well, formerly the Stralow or Church well) are subject to watermaster monitoring and control, water district assessments, and regulation within Water District 63S (WD 63S). This question has been posed several times since the district was formed in 1989. However, between 1989 and 2011, the right was pending in the Snake River Basin Adjudication and the elements of the water right had not been defined. The right was decreed on May 10, 2011 and the elements are now known, but the question of whether the right is part of the water district has not been addressed.

The partial decree for water right 63-5195 is attached to this letter for your reference. The right was decreed with a diversion rate of 0.03 ft³/s and a volume of 16.5 acre-feet per year for heating and domestic uses throughout the year. The partial decree notes the right authorizes heating of four homes, but does not define a limit on the usage per home. This is an important consideration since the order creating WD 63S specifically excluded rights to the use of geothermal water for domestic heating where "total use of water per household does not exceed 13,000 gallons per day". Water right 63-5195 is diverted from the Niznik well at a rate of approximately 13 gallons per minute, equal to about 18,720 gallons per day. As there is no requirement that the right be delivered to all four homes, the use cannot be presumed to always be less than 13,000 gallons per day per home. The right should be monitored and controlled by the water district and the owner should be subject to assessments for that monitoring. Further, the right was decreed with a priority of July 2, 1921 and is senior to all but one water right in the water district. The water right owner therefore derives a benefit from the monitoring and regulation of junior users in the water district and should participate fully in the district.

WD63S was created to administer uses of water from the Steward Gulch Geothermal Aquifer. At the time, right 63-5195 had not been adjudicated, nor was it represented by a "valid permit or license issued by the department of water resources" therefore the water right owner could not fully participate in the district¹. The current situation differs from that in 1989 given that (subsequent to the order creating the water district) the heating use under the right has been defined, 1) with a senior priority, 2) separately from the in-house domestic use, and 3) without a limit of 13,000 gallons per day per home. Further, this right has been equipped with two flow meters, and is the only multi home domestic right

¹ Both the requirements for notification of water district meetings and the process of voting by the alternative method specifically limit the water users to those holding a permitted, licensed, or decreed right. See 42-605.

Ken Neely
December 9, 2016
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diverting from the geothermal aquifer within WD 63S. This right has been decreed and defined by the SRBA Court and its delivery should be administered by a watermaster with authority over the water source.

I hope this letter is sufficient to support formalizing the inclusion of the Niznik water right and well in WD 63S. To the extent it is not sufficient or if you have further questions, please contact me to discuss.

Sincerely,



Nick Miller
Manager, IDWR Western Region

cc: WD63S file, Tim Luke, David Niznik, Charlie Honsinger, Dana Hoffstetter
Enclosure: 1 page Partial Decree for 63-5195

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 63-05195

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY 10 2011

By

Clerk

Deputy Clerk

NAME AND ADDRESS:

DAVID NIZNIK
DIANE PECK-NIZNIK
3911 WHITEHEAD
BOISE, ID 83703

SOURCE:

GROUND WATER

QUANTITY:

0.03 CFS
16.50 AFY

PRIORITY DATE:

07/02/1921

POINT OF DIVERSION:

T04N R02E S29 SWNE Within Ada County

Source is low temperature geothermal water.

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Heating	01-01 TO 12-31	0.03 CFS
		16.50 AFY
Domestic	01-01 TO 12-31	0.03 CFS

Domestic use is for internal use in 4 homes and does not include lawn, garden, landscape or other types of irrigation. If this right is changed in any way via the IDWR administrative transfer of water right process, the transfer will include a condition that the low temperature geothermal water will be used for its heat value first before any other use. Heating use is for 4 homes.

PLACE OF USE:

Heating		Within Ada County
T04N R02E S29	SWNE	
Domestic		Within Ada County
T04N R02E S29	SWNE	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use. This water right is subject to the terms of a private Agreement dated August 16, 2010, recorded at the Ada County Recorder's Office on November 2, 2010, as Instrument No. 110103331.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).